JD(ATL)–43–04
Birmingham, AL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

CONCRETE FORM WALLS, INC.

and **CASES 10-CA-34483**
10-CA-34584

ALABAMA CARPENTERS REGIONAL COUNCIL LOCAL 127 **10-RC-15381**

John Doyle, ***Esq***., for the General Counsel.
Braxton Schell, Jr., Esq., for the Respondent.

DECISION

Statement of the Case

LAWRENCE W. CULLEN, Administrative Law Judge: This consolidated case was heard by me on April 13 and 14, 2004, in Birmingham, Alabama. The charge in Case 10-CA-34483 was filed by the Alabama Carpenters Regional Council Local 127 ("the Union") on July 3, 2003.[1] The amended charge in Case 10-CA-34584 was filed by the Union on October 14, 2003. The Order Consolidating Cases, Amended Consolidated Complaint And Notice of Hearing were issued by the Regional Director of Region 10 of the National Labor Relations Board ("the Board") on February 18, 2004. The consolidated complaint alleges that Concrete Form Walls, Inc. ("Concrete Form Walls", "CFW", "the Company", or "the Respondent") violated Sections 8(a)(1), (3), (4) and (5) of the National Labor Relations Act ("the Act"). The Respondent has by its answer denied the commission of any violations of the Act.

On the entire record including my observation of the demeanor of the witnesses and after considering the trial memorandums of the parties, I make the following:

Findings of Fact and Conclusions of Law

I. <u>The Business of the Respondent</u>

The complaint alleges, Respondent admits and I find that at all times material herein for the prior twelve month period, the Respondent, with an office and place of business in Birmingham, Alabama, has been engaged in erecting concrete walls in the building and

1 All dates are in 2003, unless otherwise specified.

construction industry, that Respondent in conducting its aforesaid business operations derived gross revenues in excess of $50, 000, in performing services for various Alabama enterprises, which enterprises in turn, on an annual basis, purchased and received goods valued in excess of $50,000 in interstate commerce, directly from suppliers located outside the State of Alabama and/or shipped goods to or performed services valued in excess of $50,000 for companies located outside the State of Alabama and that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization

The complaint alleges, Respondent admits and I find that at all times material herein, Alabama Carpenters Regional Council, Local 127 has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Appropriate Unit

The complaint alleges, Respondent admits and I find that the following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All production and construction employees; excluding office clerical employees, supervisors and guards as defined in the Act.

IV. Background, Facts and Analysis

Respondent's business was commenced by its President Eric McKenzie who initially worked from his home and hired employees locally on a casual basis by going to a location where individuals gathered and made themselves available for hire on a daily basis as casual employees. As Respondent's business grew it came to include three crews who were made up of a supervisor and approximately seven employees each, who performed concrete related construction work, primarily for residential subdivisions. Respondent also had a three-person crew who prepared the footings for the construction of the foundation walls by the other three crews. Respondent's crews who had been initially hired by the crew chiefs at the above location consisted primarily of Hispanic employees many of whom did not speak English. Eric McKenzie paid the employees by cash in the approximate amount of $10,000 per week, which McKenzie withdrew from his bank account and gave to each of the crew chiefs for distribution among the employees on their crews. Most of these employees including the crew chiefs were not on a payroll and no taxes or social security payments were deducted. At the hearing Respondent maintained that these were merely casual employees and were not covered by the National Labor Relations Act. However, Eric McKenzie also testified that in March or April, 2003, his accountant advised him that he should change his method of distribution of cash to these employees as his lack of record keeping could support the conclusion that the cash he withdrew was for his own use rather than being paid to the individuals who performed the construction work. Two groups of individuals contributed labor to the completion of these jobs. The first group ("Group I") was included on the formal payroll of Respondent and Respondent withheld taxes and other deductions for these employees. At all times during March 1, 2003 through July 1, 2003, the following four individuals were included in Group I:

1. Marie Caton
2. Danny Dickerson

3. Jerry Matthews
4. Jerome Watkins

The remaining individuals were not on the formal payroll but were paid by the crew chiefs who distributed the cash they were given by Eric McKenzie, on a weekly basis. No records were kept of these employees for income or social security purposes or any other purposes. At one point in his testimony at the hearing Eric McKenzie testified he did not know the names of most of the crew members who performed the work for his projects.

In early 2003, the Union searched out the Respondent's operations, which were conducted throughout a number of residential sub-divisions being constructed in the Birmingham, Alabama area. Union organizer Johnny Arguedas testified that he began formal organizing in April 2003. Arguedas is a native Spanish speaker and is fluent in both English and Spanish. Most of Arguedas' organizing efforts of Respondent's employees involved communicating in Spanish with members of the non-English speaking work force of the three crews that were on the Respondent's cash payroll. Arguedas regularly visited the crews' work locations at residential construction job sites throughout the Birmingham area including the Rocky Ridge, Chestnut Ridge, Highland Lakes, Scout Creek, Lake Crest, Carrington Lakes, Chelsea and Liberty Park subdivisions. Between April and June 2003 he made approximately 35 job-site visits. He visited Ernesto Del Valle's crew on approximately ten occasions. He visited Nicolas Ramirez' crew on approximately 15 to 20 or more occasions. He visited Antonio Ramirez' crew on approximately five occasions. He introduced himself and met with the crew leaders and the workers. Arguedas explained the Union's purposes to the employees and distributed Union literature. He then solicited them to sign "Tarjeta de Autorizacion" or Authorization cards". Consistent with training he had received from the International Union he distributed the cards to the employees, read the language on the cards aloud in the employees' presence, asked the employees if they understood the cards or had any questions. He answered any questions and asked the employees to sign the cards. Consistent with instructions he had received from the Union Local's Director of Organizing, he wrote his initials and the date on the back of each card after observing the employees sign the cards and they returned them to him. He obtained executed "Tarjetas de Autorizacion" cards from eighteen (18) workers. Each of these eighteen workers was a resident of the Montevallo, Alabama community and Arguedas had personally observed them working on the Respondent's job sites with either Ernesto Del Valle, Nicolas Ramirez or Antonio Ramirez.

Union representatives visited the home of Respondent's Owner Eric McKenzie on June 2nd, and requested him to recognize and bargain with the Union on behalf of the employees. Respondent declined to do so and has since that time failed and refused to recognize and/or to bargain with the Union. McKenzie testified that he heard one of the men mention the word "Union" and that he turned and walked away. He testified that until this occasion, he had no indication that the Union was attempting to organize his employees.

Arguedas testified that on June 3rd he met with some of the Respondent's workers in Montevallo, Alabama, including Luis Arguello, Dorte Guerrero, Pedro Conteras, Valente Martines, and Supervisors Nicolas Ramirez and Ernesto Del Valle. Arguedas testified that during that meeting Supervisor Nicolas Ramirez told him and the employees present that earlier that morning, Respondent's Owner Eric McKenzie had found "packages" of Union literature in the personal truck of Supervisor Antonio Ramirez and that McKenzie grabbed them and began

searching the truck for further information. Arguedas also testified that during the meeting in Montevallo, Supervisor Ernesto Del Valle told the employees that earlier that day Respondent's Owner, Eric McKenzie, told him and Supervisor Antonio Ramirez that he did not want the Union and would give a one dollar an hour raise to employees who brought in proper paperwork to be placed on the non-cash payroll.

The Union filed its Petition for an Election on June 4th in Case 10-RC-15381. On the same day Respondent placed its three Crew Chiefs, Ernesto Del Valle, Nicolas Ramirez and Antonio Ramirez onto the formal payroll and also converted five non-supervisory cash workers to the formal payroll.[2] Although Respondent had promised a one-dollar an hour wage increase for conversion to the formal payroll, the Respondent did not grant the raise.

Arguedas further testified that on June 10th he met in Ernesto Del Valle's home in Montevallo, Alabama, with Ernesto Del Valle, supervisors Antonio and Nicolas Ramirez, employee Jamie Gutierrez and other employees. Employees Cesar Moreno, Felipe RoDela, and Alfredo Del Valle lived in the same house with Ernesto Del Valle at that time. Arguedas testified that during the meeting Supervisor Ernesto Del Valle told him and the other employees who were present that Owner McKenzie had called him into the office and asked him about the Union and told him that Supervisor Antonio Ramirez had said that Del Valle was behind the Union. Arguedas further testified that Del Valle then said that he had checked with Antonio Ramirez who told him that McKenzie had called him in and told him that Del Valle had said that Ramirez was behind the Union.

The parties executed and the Regional Director approved a Stipulated Election Agreement in Case 10-RC-15381 on June 12th, scheduling the election for June 24th, in the unit of "All production and construction employees, excluding office clerical employees, supervisors and guards as defined by the Act." On June 13th, Respondent's attorney transmitted a "Voter Eligibility" or "Excelsior" list to the Board's Resident office in Birmingham. The Resident Office forwarded a copy of the list to the Union. Arguedas and another organizer reviewed the list and found names on the list, which they did not recognize and they decided to inquire regarding these workers' identities.

Approximately a week or two prior to the election Arguedas took a copy of the list to Supervisor Del Valle and told him that the name Jorge Hernandez appeared on the list but was unknown to him. Del Valle told him that "Jorge Hernandez" was the name Eduardo Morales Serrano had given the Respondent when Respondent had asked for the paperwork in return for the raise. Arguedas then wrote the name "Eduardo Morales" next to the name "Jorge Hernandez" on the list, Arguedas then asked about the entry "Severino Morals" on the list and Del Valle told him that this was the name that Mizael Del Valle had given the Respondent when it asked for paperwork. Arguedas wrote "Mizael Del Valle" next to the entry "Severino Morals." Arguedas next asked Supervisor Del Valle about the name "Cesar Moreno" on the list and Del Valle told him that this was the same person as "Cesar Moreno Morales" who had already been signed up by the Union. Arguedas next asked Del Valle about the entry "Venancia Morales Serrano" and Del Valle told him this was the name Alberto Morales Serrano had given the

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[2] Antonio Ramirez was placed on the payroll as "Ramirez Aldo Quintana". Although the parties stipulated that Nicolas Ramirez was also converted to the payroll that date, he is not listed on the payroll.

Respondent for the raise and Arguedas then wrote "Beto Morales" next to the entry "Venancia Morales Serrano" on the list. Arguedas asked about the entry "Omar Garcia Vela" on the list and Del Valle told him this was the entry for "Jesus" whom the Union had already signed up as "Jesus Omar Garcia Vela" and Arguedas then made an abbreviated entry of "Jesu Gar." He made all of these entries in Supervisor Del Valle's presence. Additionally at the hearing Arguedas identified Eduardo Morales, Alberto Morales, and Mizeal Del Valle from photographs taken during a cookout at Supervisor Del Valle's home during the organizing campaign. He identified them as the same employees he saw working regularly with Ernesto Del Valle and who had signed their authorization cards.

The Union made arrangements to transport the unit employees to the polls for the June 24th election. When Arugendas visited the job sites he learned that several multiple concrete truck pours were scheduled for that afternoon. The Union picked up seven employees who were willing to come and transported them to the polls. Arguedas identified the seven voters who had signed cards as Mizeal Del Valle, Alberto Morales Serrano, Cesar Moreno Morales, Jesus Omar Garcia Vela, Pedro Contreras, Valente Martines and Benjamin Romero.

The Board conducted the election. The tally of ballots showed that of approximately 9 eligible voters, 0 votes were cast for Union representation, 4 cast votes against Union representation, there were no void ballots and there were 7 determinative challenged ballots. The Union thereafter filed objections to conduct affecting the results of the election.

Following the election, the Regional Director sent a letter requesting evidence regarding the eligibility of those who had cast determinative ballots. The Respondent ran searches through an internet credit data base "People Find USA" regarding the names and social security numbers of the four Hispanic formal payroll employees who had appeared at the polls. The Respondent then discharged these individuals on or about July 1st. The Respondent continued to employ a cash basis work – force at that time and continued to employ Jose Hernandez who had not appeared at the polls to vote. It did not run searches of any of the other employees.

Benjamin Romero testified that after he voted in the election, Supervisor Antonio Ramirez told him and other crewmembers on four or five occasions that those who voted in the election would not have work with the company. He also testified that about two months after the election, Supervisor Antonio Ramirez told him that because of differences between the Company and the Union, the employees who had voted in the election would not be working for the Respondent anymore.

The Alleged Section 8(a)(1) allegations
The Truck Search

The complaint alleges that on about June 3rd, the Respondent by Eric McKenzie at a job-site in the Birmingham, Alabama vicinity, in the presence of employees, searched areas of a personal vehicle where employees ordinarily keep their personal effects and confiscated materials related to the Union from the vehicle.

It is undisputed that on June 3rd Respondent's Owner Eric McKenzie searched the personal truck of supervisor Antonio Ramirez. Johnny Arguedas testified that he met with supervisor Nicolas Ramirez in the presence of several employees on the evening of June 3rd and

that Supervisor Nicolas Ramirez, a Section 2(11) supervisor and a Section 2(13) agent of Respondent under the Act, told them that on that day McKenzie had found "packages" of the Union literature which Arguedas had distributed, in the personal truck of Supervisor Antonio Ramirez and that McKenzie then opened the truck and started looking through it.

Supervisor Antonio Ramirez testified at the hearing that during the Union campaign he owned a pink truck which he used for company business to transport tools and to drive from one job-site to another and to transport Respondent's employees to their jobs from their homes. He also testified that Owner Eric McKenzie would check his truck on occasion to insure that the crew still had the equipment that McKenzie provided and to check if it lacked any materials required for the jobs. He also testified that on one occasion McKenzie found a Union flyer in his truck.

Owner Eric McKenzie testified that during the Union campaign, Supervisor Antonio Ramirez drove his (Ramirez's) personal truck to transfer tools and equipment among the job-sites. He acknowledged having looked at the contents of Supervisor Antonio Ramirez's personal truck which he testified was routine as he from time to time searched all of the trucks driven by the supervisors to insure that Respondent's tools and equipment were still in the trucks and that the trucks had sufficient materials necessary for the jobs required by Respondent.

Supervisor Ernesto Del Valle testified that during the Union campaign, supervisor Antonio Ramirez drove his personal truck and carried company tools on it and that employees rode in the truck and that on occasion employees rode in the truck while Antonio Ramirez drove a company truck from one jobsite to another.

Analysis

I credit the specific account of Arguedas who testified concerning the statements made by Supervisor Nicolas Ramirez to Arguedas in the presence of Supervisor Del Valle and employees gathered at Del Valle's house on the evening of June 3rd. I find that Respondent's failure to call Nicholas Ramirez to testify concerning this matter warrants an inference that his testimony would have been adverse to the Respondent's position in this case. *International Automated Machines*, 285 NLRB 1122, 1123 (1987) enfd. 861 F.2d 720 (6th Cir. 1988). I find that Arguedas testimony as to what Supervisor Nicolas Ramirez had related to him and the gathered employees was an admission by Nicolas Ramirez that he had observed McKenzie grab the Union literature in Antonio Ramirez's truck and search for additional information concerning the Union. I find that the account of Nicholas Ramirez as relayed by Arguedas directly points out what McKenzie did after he discovered the Union literature in Antonio Ramirez's truck. Moreover the timing of the search of Antonio Ramirez' truck by McKenzie the morning following the Union's assertion of majority authorization card status and its demand for recognition suggests that the search of the truck by McKenzie was motivated by his being apprised of the Union campaign the night before by the Union's assertion of majority status and its demand for recognition. I find that the relation of this incident by Supervisor Nicholas Ramirez to the gathered employees violated Section 8(a)(1) of the Act as this recounting of McKenzie's search for additional Union literature in the truck was inherently coercive sufficient to draw Supervisor Nicholas Ramirez' attention and this conduct reasonably tended to interfere with the employees' free excise of their rights under the Act. *Naomi Knitting Plant*, 328 NLRB 1279, 1280 (1999), citing *Williamhouse of California, Inc.*, 317 NLRB 699, 713 (1995).

The Promise of a Raise

The complaint alleges that Respondent violated Section 8(a)(1) of the Act by Supervisor Ernesto Del Valle's account by telling employees during a meeting at his home with certain of Respondent's employees on the evening of June 3rd that Owner Eric McKenzie had told the supervisors that he did not want anything to do with the Union and that he would give a one dollar an hour raise to anyone of the employees who brought in documentation to convert from cash to the formal payroll. This statement was related to Arguedas and the employees gathered at the meeting by Supervisor Del Valle who was a section 2(11) supervisor and a Section 2(13) Agent of Respondent under the Act. All of the cash employees were employees who had been selected by Respondent and its supervisors to perform the work and who were paid on a cash basis. These were Spanish speaking Hispanic employees who generally spoke very little if any English.

Owner McKenzie testified that he told supervisors he would give a one dollar per hour raise to cash workers who brought in Social Security cards and converted to the formal payroll on the recommendation of his accountant in March or April 2003, in order that the large sums he withdrew weekly to give to his supervisors to pay the employees would not be considered to be income for him personally rather than to the employees who were being paid for their work.

Supervisor Ernesto Del Valle testified that approximately two months prior to the Union's Request for Recognition, employees were being converted from cash to the formal payroll and that he (Del Valle) had asked McKenzie for a dollar an hour raise for employees who were generally paid eight dollars per hour. He testified he did not tell Arguedas and the employees at the June 3rd evening meeting that McKenzie had offered the dollar per hour raise for employees who converted from cash to the formal payroll. He also testified that it took around eight days for the conversion to become effective.

Analysis

I credit the testimony of Arguedas that Del Valle related the offer of a one dollar per hour raise by McKenzie which was coupled with the prior statement of McKenzie that he did not want to have anything to do with the Union. I found Arguedas' testimony to be specific and accurate in detail as to what Del Valle said. Arguedas pinpointed the meeting at which Del Valle made these statements as the evening of June 3rd rather than the generalized testimony of McKenzie and Del Valle who could not recall the dates when the payroll changes went into effect.

I find that the Respondent did not take action to convert its cash employees to the formal payroll until it learned of the Union campaign on June 2nd when the Union requested recognition. Despite the generalized testimony of Owner McKenzie to the effect that Respondent's accountant had advised him in March or April to convert their employees from a cash to a formal payroll status, there was no evidence that any employees were converted to the formal payroll system until the week following the June 3rd meeting of McKenzie with his supervisors. As the General Counsel argues in brief it is highly likely that the cash employees would have presented documentation the very next day after being told they would be given a one dollar per hour raise if they brought in documentation showing their legal work status to be placed on the formal payroll. However, the parties stipulated at the hearing that no one was converted from cash to

formal payroll until June 4th, two days after the demand for recognition.

The accounts of Del Valle and Arguedas are at odds as Arguedas testified that Del Valle relayed the promise by McKenzie of a raise at the June 3rd meeting, whereas Del Valle denied that there had been a promise of a raise made by McKenzie. Rather Del Valle testified that he told the employees at the June 3rd meeting that he had asked for a raise. However, consistent with Arguedas' account, McKenzie admitted at the hearing that he had promised a raise. It is undisputed that the raise was not given to the employees by Respondent. Furthermore, Respondent's failure to call its supervisor Nicholas Ramirez, who was present at the June 3rd meeting when Del Valle made these statements concerning the raise gives rise to an inference that Ramirez would have corroborated Arguedas' account rather than Del Valle's.

It is well settled that the promise or grant of benefits such as a raise made by an employer to dissuade employees from organizing violates Section 8(a)(1) of the Act. I find that Respondent did promise the supervisors that the employees would be given a raise and made this statement on the morning after McKenzie had received and refused the Union's request for recognition. Del Valle's statement as testified to by Arguedas was that McKenzie initially told the supervisors at the June 3rd morning meeting that he did not want to have anything to do with the Union and then followed this up by telling the supervisors he would grant the employees a dollar an hour raise if they brought in documentation in order to be placed on the payroll. When Del Valle repeated these statements and the offer of a raise coupled with the statement of McKenzie that he did not want anything to do with the Union, the Respondent violated Section 8(a)(1) of the Act. *CBF, Inc.*, 314 NLRB 1064, 1071 (1994); *Wis-Pak Foods, Inc.*, 319 NLRB 933, 938 (1995) citing *Low Kit Mining Co.*, 309 NLRB 501, 507 (1992).

The June 10th Statements by Ernesto Del Valle

Johnny Arguedas testified that he met with supervisors Ernesto Del Valle, Nicolas Ramirez, Antonio Ramirez and several non-supervisory employees in Montevallo, Alabama on June 10th. He testified that at this meeting Del Valle told him that Owner Eric McKenzie had called him (Del Valle) in earlier that day and told him that Antonio Ramirez had told him that Del Valle was behind the Union. Arguedas testified that Supervisor Del Valle also told them that he discussed this with Antonio Ramirez who told him that McKenzie had also called him in and told him that Del Valle had told him that he (Antonio Ramirez) was behind the Union. Ernesto Del Valle who was called as a witness by Respondent acknowledged that he had met with Arguedas at his home on June 10th, but denied having told Arguedas that McKenzie had told him that Antonio Ramirez had said that he (Del Valle) was behind the Union. Respondent did not call Nicolas Ramirez to testify and did not inquire of Antonio Ramirez of the meeting of June 10th, although Arguedas' unrebutted testimony placed both Nicolas and Antonio Ramirez as present at the June 10th meeting. I find that the failure to call Nicolas Ramirez as a witness and to question Antonio Ramirez concerning this matter warrants an inference that they would have corroborated Arguedas' accounts.

Analysis

I credit the testimony of Arguedas concerning the statements made by Del Valle at the June 10th meeting. I find that McKenzie was attempting to obtain information concerning the Union from his supervisors. This did not violate the Act as supervisors are excluded from the

protection of the Act. However, when Supervisor Del Valle told the employees present at the June 10th meeting of the aforesaid conduct of McKenzie regarding the interrogation and attempt to pit his supervisors against each other, this was violative of Section 8(a)(1) of the Act as it reasonably tended to create an impression among employees that their own identities and conduct in support of the Union was under surveillance as Respondent was seeking information concerning their union activities. *United Charter Services, 306 NLRB 150 (1992).*

The Discharges

The complaint alleges that Respondent discharged its employees Jesus Omar Garcia Vela, Cesar Moreno, Venancia Morales Serrano, and Severino Morals because of their engagement in union and protected activities in violation of Section 8(a)(3) of the Act and because of their participation in a Board representation proceeding in violation of Section 8(a)(4) of the Act. All aspects of participation in the Board's processes, including voting in a Board election, are protected by the Act. *Hyatt Regency Memphis*, 296 NLRB 259 fn. 4 (1989). *Wright Line, A Division of Wright Line, Inc.*, 251 NLRB 1083 (1980) enfd. 662 F.2d 899 (1st Cir. 1981), cert. Denied 455 U.S. 989 (1982) applies in cases where the employer's motivation is at issue. See *McKesson Drug Co.*, 337 NLRB 935, 936 (2002) applying *Wright Line* shifting burden test to Section 8(a)(4) allegations. Under Wright Line, the General Counsel has the initial burden to establish a prima facie case of improper motivation by establishing the following four elements:

(1) The alleged discriminatee engaged in union or protected concerted activities,
(2) Respondent knew about such activity;
(3) Respondent took adverse employment action against the alleged discriminatee; and
(4) There is a link or nexus between the protected activity and the adverse employment action, "*Carrier Corp.*, 336 NLRB 1141, 1150 (2001).

Once these four elements have been established, the burden shifts to the Respondent to prove, by a preponderance of the evidence, that it took the adverse action for a legitimate non-discriminatory business reason.

In the instant case the four alleged discriminates appeared at the polls to vote in the election and their ballots were challenged by Respondent upon advice of its attorney to test the application of the Supreme Court's decision in *Hoffman Plastic Compound, Inc. v. NLRB*, 533 U.S. 976 (2001). The employees' right to vote is protected under Section 8(a)(4) of the Act. The employees' arrival at the polls to vote and their previous signing of Union authorization cards constituted protected and Union activity. The Employer had knowledge that the employees were picked up by Union representatives at several job-sites as witnessed by supervision. Respondent was also aware that these employees had appeared at the polls and were challenged. All four employees were discharged on or about July 1st, establishing the adverse action. Respondent's hostility toward the Union and its supporters is established by the Section 8(a)(1) violations found and by supervisor Antonio Ramirez' statements to employees after the election that those who voted in the election would lose their jobs. It was stipulated that the Respondent only ran identity checks for the four employees who voted in the elections as they were the only Hispanic payroll employees to appear at the polls to vote.

Respondent contends in brief as follows:

Many of the individuals who performed work for CFW were Hispanic, as were some of the individuals who presented documentation and were added to the payroll. Others on the CFW payroll are not of Hispanic background. The immigration laws require an employer to check documentation such as Social Security card at the time of hire and not to hire anyone who cannot produce adequate documentation. The immigration laws (and the INS website and employer bulletins) instruct employers to be evenhanded in application of these rules. An employer is to require documentation from each applicant, whether or not the employer may feel that it has reason to suspect the applicant may be undocumented. Similarly, an employer is to accept at face value documents, which appear genuine and establish that the applicant is able to work in the United States. An employer should not, without more, make further inquiry about applicants that it may feel on racial or cultural grounds are more likely to have presented false documentation.

All four of the individuals voted in the election on June 24, 2003. Prior to the election, CFW decided, as is clearly its right, to contend both that undocumented aliens are not employees within the meaning of the Act and that undocumented aliens do not have a community of interest with legal employees. The recent U.S. Supreme Court decision in *Hoffman Plastic Compounds, Inc., supra* supports its argument as to whether these individuals can be covered by the NLRA. The Board's decisions on community of interest suggest that undocumented aliens should be excluded from this bargaining unit. In order to preserve its legitimate arguments, CFW was forced to challenge the ballots of any possibly undocumented aliens. Of course, once a ballot is cast without challenge any argument as to that individual's eligibility to vote is forever waived.

Even though these four individuals had presented documentation, which appeared to be valid, it is undisputed that they are aliens, and at that point CFW had made no inquiry into the validity of their documentation. Any individuals not on the eligibility list were to be challenged by the Board, so CFW did not take upon itself to challenge any of its casual employees who tried to cast ballots. CFW did not challenge the four individuals who voted because its president had personal knowledge that each of the four were born and raised in the United States, and thus were neither undocumented nor alien.

After the election was held, CFW received a request from the Board's Regional Office to submit evidence in support of its position on its four challenges. CFW then took steps for the first time to determine whether the documentation (i.e., Social Security numbers) submitted by these four individuals was in fact genuine. Had CFW refused to respond to the Boards' request for evidence it would at some point have lost these challenges regardless of the correctness of its legal argument. The searches instigated by CFW demonstrated that all four of these individuals had presented false credentials in order to be placed on CFW's payroll. At that point, CFW was in possession of information, which demonstrated that these four individuals were undocumented aliens. A failure by CFW to immediately discharge all four would have subjected it to civil and criminal penalties under IRCA. CFW had no choice – it immediately terminated these four individuals.

General Counsel will contend that these individuals were unlawfully 'singled out' for further inquiry into their status, which somehow constitutes discrimination. It is true that CFW did not check the credentials of the four individuals who voted without challenge, and also did not check the credentials of other employees who did not vote. However, Eric McKenzie has testified without contradiction that the four voters who went unchallenged were known to him to be U.S. citizens by birth, so there was no need to either challenge them or check their documentations. With respect to individuals who did not vote, employers are generally instructed by the Immigration Service not to look behind apparently genuine documents presented at the time of application. Any employer who does so runs obvious risks under Title VII of the Civil Rights of Act of 1964 and otherwise for national origin discrimination.

This situation is different with respect to these four people. CFW had to challenge their votes to preserve its legal argument and had to obtain information on their immigration status to respond to the board's request for evidence and to determine whether its legal argument applied to any of these individuals. If CFW is found liable under § 8(a)((3) for its actions with respect to these four individuals, it will be punished for taking a legitimate legal position and then doing only what was absolutely necessary to preserve that position.

CFW also notes that the discharge of these individuals presents as clear a defense as can be imagined under *Wright Line*, 252 NLRB 1083 (1908). Of course *Wright Line* stands for the proposition that a discharge or other discriminatory act, which might be found illegal because of a finding of unlawful intent, is not a violation of Act if the employer can demonstrate that it would have taken the same action regardless of its intent. Here, CFW has demonstrated that it would have been a federal crime for it not to have discharged these individuals immediately upon receipt of knowledge of their status. *Wright Line* also mandates a finding that these discharges are not unlawful.

Conclusions

I find that Respondent has failed to prove that the four employees at issue in this case were illegal aliens or barred from employment in the United States. In the *Hoffman* case on which the Respondent relies, the Supreme Court reversed enforcement of a Board order awarding backpay to an undocumented worker whom the employer hired without knowledge of his immigration status. The Court held that the Immigration Reform and Control Act of 1986 (IRCA) developed a comprehensive scheme to combat the employment of undocumented workers in the United States. It held that IRCA foreclosed the Board from awarding backpay to an individual who was not legally authorized to work in the United States. It held that a backpay award "for a job obtained in the first instance by [the applicant's] criminal fraud . . . not only trivializes the immigration laws, it also condones and encourages future violations." *Hoffman* at 1283, 1284. It held that the discriminatee was unable to comply with Board law requiring him to mitigate damages by seeking lawful interim employment Id. At 1284. However, the Court noted that the Board retained "other significant sanctions" to deter these discharges, such as notice posting provisions and cease and desist orders, subject to contempt sanctions Id. At 1285. The Court reaffirmed its prior holding in *Sure-Tan Inc. v. NLRB*, 467 U.S. 883, 892 (1984) that undocumented aliens are employees under the National Labor Relations Act. In *County Window Cleaning Co.*, 328 NLRB 190 fn. 2 (1999) the Board overruled a challenge to an election ballot

based on immigration status.

Respondent's Wright Line defense failed to demonstrate by a preponderance of the evidence that it would have discharged the four employees even in the absence of their Union or concerted protected activities. It is undisputed that work was available. Respondent took no action to check the legality of the work status of its other Hispanic employees other than the four employees who appeared at the polls to vote. Its reliance on the *Hoffman v. NLRB* case is misplaced as it did not profess any concern about the legal status of its Hispanic employees other than these four employees. Moreover, Respondent has not proved by its resort to a credit locater on the Internet that these four employees did not have legal standing to work in the United States because of their purported alien status.

General Counsel contends in brief that Respondent ignored potential concerns of their employees' work eligibility status and singled out only those employees who engaged in protected activities. He notes that in this case Respondent staffed three crews with one supervisor and approximately seven workers per crew, all of them non-English speaking and all of them working "off the books". Owner McKenzie withdrew approximately $10,000 in cash each week, which he distributed, to the supervisors to pay the workers. McKenzie did not inquire concerning the workers' names, documentation or require social security cards of them until the advent of the Union's request for recognition. General Counsel contends that Respondent was clearly indifferent to the lack of documentation to work in the United States of any of the employees or even the supervisors.

General Counsel contends that the search results supplied by "People Find USA" are not probative to show whether or not the employees had documentation to work in the United States. The failure of the credit search to match the social security card numbers presented by these workers to the Respondent in return for being placed on the Respondent's payroll with the promise of one dollar per hour raise, indicates noting more than the social security numbers do not belong to individuals who appear in the credit databases because they have not been securing loans.

I find in agreement with the General Counsel's position as set out above, that Respondent failed to carry its burden of establishing a *Wright Line* defense and the discharge of these employees violated Section 8(a)(1), (3) and (4) of the Act.

The Bargaining Allegations

The complaint alleges that Respondent has refused to recognize the Union and bargain with it in good faith. Respondent admits that it has not recognized the Union nor bargained with it on behalf of the unit employees and contends it has no obligation to do so. The Union and General Counsel seek a bargaining order retroactive to June 2, 2003, when the Union had attained bargaining status and made a demand for recognition on Respondent's Owner, Eric McKenzie in reliance on the single purpose authorization cards and Respondent's unfair labor practices which are alleged in the complaint to have been so outrageous and pervasive as to preclude the holding of a fair re-run election. Eighteen authorization cards out of a bargaining unit of twenty-five solicited by Union organizer Johnny Arguedas were received in evidence. Arguedas testified that he personally solicited the cards. Employee Benjamin Romero authenticated his own card. *Don the Beachcomer*, 163 NLRB 275 fn. 2 (1967). These cards

clearly establish that the Union had a majority of cards signed when it made its June 2nd demand for recognition and bargaining. As set out above the unit description is stipulated as "all construction and production employees, excluding office clerical employees, supervisors and guards as defined by the Act." Respondent utilized two payrolls during the period of the request for recognition and immediately thereafter. Group I consisted of employees who were at some point on Respondent's formal payroll. Group II employees were paid in cash. Group I was made up of four employees. Marie Caton, Danny Dickerson, Jerry Matthews and Jerome Watkins were included in the unit. Respondent contends that the individuals who joined Group I as formal payroll employees (the four discriminatees in this case) on June 4th did not have proper documentation and were not "employees" within the meaning of the Act and did not have a community of interest with the other employees. However, the Group II employees (who were paid in cash) had regular and recurrent employment with the Respondent. Benjamin Romero worked more than a year as a Group II cash employee on an average of five to six days a week plus additional days in some weeks.

Arguedas testified that he made over 35 job-site visits over several months and with a few exceptions observed the same 25 employees working in the same crews under the same supervisor from April through June 2003. Nine of these employees were in Group I (formal payroll) and sixteen other employees were not in Group I. Thus the Group II individuals were regularly employed by Respondent. The testimony of Arguedas was not disputed nor rebutted at the hearing. The employees on the Group II cash payroll worked under the same supervisors as Group I employees and all employees were under the overall direction of Owner McKenzie. The common supervision is demonstrative of the community of interest between the Group I and group II employees. It was stipulated that in each crew the employees performed the same work, used the same tools and rode together in vehicles and had common working conditions.

The following are single purpose authorization cards clearly authorizing the Union to act as the signer's bargaining representative. These cards were self-validating and have been authenticated.

> Autorizo a _____ de la Hermandad de Carpinteros y Ensambladores de America (la Unión) a representarme en convenios colectivos con cualquier patron para quien trabajare dentro de la jurisdicción de la Unión. Entiendo que esta tarjeta puede ser utilizada para obtener el reconocimiento de me actual o futuro empleador con sin una elección. Esta autorización quedara en efecto hasta tanto someta una revocación por escrito.
>
> I authorize _____ of the United Brotherhood of Carpenters and Joiners of America ("the Union") to represent me in collective bargaining with any employer for who I may work within the jurisdiction of the Union. I understand that this card may be used to obtain recognition from my current or future employer with or without an election. This authorization shall remain in effect until such time as I submit a written revocation.

There was no evidence of any misrepresentation by Arguedas made to any unit employee, which would invalidate the cards. Rather the testimony of Moreno was supportive of the

testimony of Arguedas concerning what he was told by Arguedas. *Amalgamated Clothing Workers v. NLRB*, 419 F.2d at 1209. There was no evidence of supervisory taint of the cards as there was no evidence of coercion or implied employer favoring of the Union. It is undisputed that each of the cards was signed in the presence of Arguedas who witnessed the signature and the cards authenticity and signature have been validated. The Union as of June 2d had a clear majority of 18 cards in a 25-employee unit.

In *NLRB v. Gissel Packing Co.*, 395 U.S. at 613-18, the Supreme Court set out two categories of cases in which a bargaining order may be warranted. Category I cases are exceptional cases which involve outrageous and pervasive unfair labor practices that traditional remedies will not suffice to erase the coercive effects of the unfair labor practices and preclude a fair and reliable election. Category II cases are "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." Id at 614-15. In Category II cases a bargaining order is warranted because "the possibility of erasing the effects of past practices and of insuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order."

I find that this is a Category I case in which the unlawful conduct of discharging the four discriminates because they voted in the NLRB election constitutes "hallmark" violations of Sections 8(a)(1), (3) and (4) of the Act and precludes the likelihood of a fair and reliable election if it were to be rerun as this conduct by the highest member of Respondent's management, Owner McKenzie went to the heart of the employment relationship and involved not only discrimination for engaging in union and concerted activities, but also involved interference with Board process by thwarting the employees' right to vote in an NLRB conducted election. Further, the threats and discriminatory discharge of Benjamin Romeo after the election demonstrates that Respondent's outrageous and pervasive unfair labor practices are continuing, thus demonstrating the likelihood that Respondent will continue in its illegal conduct designed to frustrate the purposes of the Act. In the event that the Board does not decide that a Category I bargaining order is warranted, I recommend a Category II bargaining order

Conclusions of Law

1. Respondent is an employer within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by searching the truck of Antonio Ramirez for Union organizing materials.

4. The Respondent violated Section 8(a)(1) of the Act by creating among its employees the impression that it was engaging in surveillance to determine their Union activities.

5. Respondent violated Section 8(a)(1) of the Act by promising pay raises to employees, in order to discourage employees from engaging in Union activities.

6. Respondent violated Sections 8(a)(1), (3) and (4) of the Act by discharging its employees Omar Garcia Vela, Cesar Moreno, Severino Morals, and Venancia Morales Serrano because of their engagement in union and protected concerted activities in violation of Section 8(a)(1) and (3) of the Act and violated Section 8(a)(1) and (4) of the Act because of their participation in Board process by voting in the election.

7. Respondent violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union regarding the appropriate bargaining unit of "All construction and production employees, but excluding office clerical employees, supervisors and guards as defined by the Act".

8. The above unfair labor practices in conjunction with the status of Respondent as an employer within the meaning of the Act affect commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The Election

On December 16, 2003, the Regional Director of Region 10 of the National Labor Relations Board issued his Report on Challenged Ballots, and Petitioners' Objections, Order Directing Hearing, Order Consolidating Cases, and Order Transferring Cases To The Board.

Pursuant to a Stipulated Election Agreement approved by the Regional Director of Region 10 of the National Labor Relations Board on June 12, 2003, an election by secret ballot was conducted on June 24, 2003, among the employees in the appropriate unit of "All production and construction employees, excluding office clerical employees, supervisors and guards as defined by the Act" to determine a question concerning representation raised by a petition filed by the Petitioner United Brotherhood of Carpenters and Joiners of America, Local 127 on June 4, 2003.

Upon conclusion of the balloting, a tally of ballots showed that of approximately 9 eligible voters, 0 cast ballots for and 4 cast valid votes against the Petitioner. In addition there were 7 challenged ballots. The challenged ballots are sufficient in number to affect the results of the election. On June 30, 2003, the Petitioner filed timely objections of conduct affecting the results of the election. After investigation of the challenges, the Regional Director concluded that the challenges to the ballots of Severino Morales, Cesar Moreno, Venancia Morales Serrano, Jesus Garcia, Pedro Contreras, Valente Martinez and Benjamin Romero and Petitioner's Objections 2, 3, 7 and 8 should be consolidated with Case 10-CA-34483 for hearing before an Administrative Law Judge and issued the Report on Challenged ballots, Petitioner's Objections, Order Directing Hearing, Order Consolidating Cases, and Order Transferring Cases To The Board.

I find the challenges to the ballots of Severino Morales, Cesar Moreno, Venancia Morales Serrano and Jesus Garcia should be dismissed as the Employer has failed to established that they are not eligible to vote. Rather the record testimony of Johnny Arguedas in this case establishes that these individuals were employed and performed the same work as other employees in the bargaining unit and thus have a community of interest with the unit employees. Individuals employed by an employer during the eligibility period and the date of the election are entitled to vote as their immigration status is irrelevant to the employees' eligibility to vote. *County*

Window Cleaning Co., 328 NLRB 190 fn. 2 (1999) See also *Superior Truss & Panel, Inc.*, 334 NLRB No. 916, 918 (2001) In *Hoffman Plastics Compounds, Inc. v. NLRB*, 335 U.S. 137 (2002) the Supreme Court affirmed the principle that undocumented aliens are employees under the Act within the definition of "employee" and are entitled to vote in Board elections.

I find the challenges to the ballots of Pedro Contreras, Valente Martinez and Benjamin Moveno should be dismissed as the testimony of Johnny Arguedas established that they were employees in the unit on the day of the election when they appeared to vote.

In addition the Petitioner Union filed objections to the election. The critical period in this case is the period of time from the date of the filing of the petition on June 4, 2003 through the election on June 24, 2003. The Petitioner Union filed eight objections to the election. Pursuant to the Regional Director's Report on Objections, only objections 2, 3, 7 and 8 were consolidated with the unfair labor practice cases for hearing and referred to the undersigned.

In Objection 2 Petitioner contends that during the critical period prior to the election the Employer promised to and, in fact, subsequently did place employees on its non-cash payroll and gave them $1.00 per hour pay increases in order to induce them not to support the Petitioner. The record in this case shows that the raise had not been received by the employees as of the time of the hearing in this case.

I find that Objection 2 should be sustained as I found that pursuant to Respondent's promise of a raise to the employees on June 3rd which was coupled with the prior statement by Owner McKenzie that he did not want to have anything to do with the Union as related to the employees by Supervisor Ernesto Del Valle on June 3rd, the Respondent violated Section 8(a)(1) of the Act. Although the June 3rd date is prior to the critical period from June 4th to the date of the election on June 24th, it was on June 4th (which was during the critical period) that the employer actually placed the employees on its formal payroll.

In Objection 3 Petitioner contends that during the critical period, the Employer created the impression that employees' protected activities were under surveillance. I find that this objection should be sustained in view of my finding that on June 10, 2003 supervisor Ernesto Del Valle related to employees at a meeting on that date the conduct of Owner Eric McKenzie regarding McKenzie's interrogation of Del Valle and his attempt to pit his supervisors against each other to obtain information concerning the Union from his supervisor, thus creating an impression among employees that their own identities and conduct in support of the Union were under surveillance as Respondent was seeking information concerning their union activities.

In Objections 7 and 8 Petitioner contends that on the date of the election June 24, 2003, the Employer scheduled and assigned employees in such a manner as to impede employees from voting in the election and refused to release them from work in an attempt to prevent them from voting in the election. The Employer denies engaging in any objectionable conduct.

I find the evidence presented at the hearing is insufficient to sustain these objections. There was testimony that there were multiple concrete pours scheduled by the Employer for that date, Owner McKenzie testified that the Employer has to accept the concrete whenever it is available. His testimony in this regard was unrebutted. Moreover there was evidence that after being contacted by the General Counsel concerning the likelihood that employees would not be

able to vote as scheduled, Respondent's counsel issued a "release letter" authorizing employees to leave their work to vote without threat of reprisals for doing so.

In summary, I recommend that the challenges to the ballots of Severino Morales, Cesar Moreno, Venancia Morales, Jesus Garcia, Pedro Contreras, Valente Martinez and Benjamin Romero should be dismissed and their votes should be counted and certified. I also find that Objections 2 and 3 should be sustained and Objections 7 and 8 should be overruled.

The Remedy

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes of the Act including the posting of the Board notice attached to the decision.

I shall recommend that Respondent be ordered to rescind the unlawful discharges of Cesar Moreno, Jesus Omar Garcia Vela, Venancia Morales Serrano, and Severino Morals, and reinstate them to their former positions or to substantially equivalent positions if the former positions no longer exist and make them whole for any loss of earnings and benefits they may have suffered by reason of Respondent's unlawful discharges of them.

All loss of earnings and benefits shall be computed as provided in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed under *New Horizons for the Retarded*, 283 NLRB 1173 (1987) at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. Section 6621.

It is further recommended that Respondent be ordered to remove from its records all references to the discharges of Cesar Moreno, Jesus Omar Garcia Vela, Venancia Morales Serrano, and Severino Morals, and to notify each of the employees that this has been done and that evidence of such discharges will not be used against them.

I find the Respondent's numerous unfair labor practices warrant a broad cease and desist order. In view of the employment of a number of employees who do not understand or speak English, I recommend that the notice be posted in both English and Spanish. I also recommend there be a public reading of the notice by a responsible management official or by a Board agent in the presence of a management official.

It is recommended that challenged ballots be opened and counted and that a Certification of Representative issue if the revised Tally of Ballots demonstrates that a majority of the ballots were cast in favor of representation by the Union, but otherwise that the election be set aside.

It is further recommended that upon request by the Union the Respondent shall within 10 days of said request commence bargaining in good faith with the Union on behalf of the Unit employees for a reasonable time and if an understanding is reached, embody the understanding in a signed agreement. *Raven Government Services*, 331 NLRB 651 (2000); *Nickolas County Health Care Center*, 331 NLRB 970 (2000).

On these finding of fact and conclusions of law and on the entire record, I issue the following recommended[3]:

ORDER

The Respondent, Concrete Form Walls, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Searching personal vehicles in which employees customarily ride for materials related to Union organizing campaigns.

(b) Creating among employees the impression that it is engaging in surveillance to determine their Union activities.

(c) Promising pay raises to employees, in order to discourage employees from engaging in Union activities.

(d) Discharging employees because of their Union activities, participation in elections conducted by the National Labor Relations Board concerning Union representation, or other concerted protected activities.

(e) Refusing to recognize and bargain with Alabama Carpenters Regional Council, Local 127 regarding the appropriate bargaining unit of "All construction and production employees, but excluding office clerical employees, supervisors and guards as defined by the Act."

(f) Respondent shall not in any other manner interfere with, restrain or coerce its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act:

(a) Within 14 days from the date of this Order, offer full reinstatement to Omar Garcia Vela, Cesar Moreno, Severino Morals, and Venancia Morales Serrano to their former jobs or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make the aforesaid employees whole for any loss of earnings and other benefits with interest suffered as a result of the discrimination against them in the manner set forth in "The Remedy" section of this Decision.

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[3] If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of employees Omar Garcia Vela, Cesar Moreno, Severino Morals, and Venancia Morales Serrano, and within 3 days notify the employees in writing that this has been done and that these unlawful actions will not be used against them in any way.

(d) Immediately recognize the Union as the collective bargaining representative of the unit employees, retroactively to June 2, 2003, and upon request within 10 days of said request for bargaining by the Union commence bargaining in good faith with the Union on behalf of the unit employees for a reasonable time and if an understanding is reached, embody the understanding in a signed agreement.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix[4]." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The notice shall be posted in both English and Spanish and shall be read in the presence of all unit employees by a responsible management official or by a Board agent in the presence of a management official and shall also be read in Spanish by an interpreter. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 2, 2003.

(g) It is further ordered that the Regional Director for Region 10 shall within 14 days from the date of this Decision and Order, open and count the ballots of Severino Morales, Cesar Moreno, Venancia Morales, Jesus Garcia, Pedro Contreras, Valente Martinez and Benjamin Moreno. If the revised Tally of ballots demonstrates that a majority of the ballots were cast in favor of representation by the Union, the Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification. Otherwise the election shall be set aside.

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4 If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C.

Lawrence W. Cullen
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT engage in conduct that makes it appear that we are spying to discover employees' activities on behalf of the Alabama Carpenters Regional Council, Local 127.

WE WILL NOT promise raises or other benefits in order to encourage you to abandon support for the Union.

WE WILL NOT search privately owned vehicles or other places where employees keep personal effects for materials and fliers related to the Union.

WE WILL NOT discharge employees for supporting the Union or for voting in an election conducted by the National Labor Relations Board.

WE WILL NOT refuse to recognize and bargain with Alabama Carpenters Regional Council, Local 127 as the exclusive collective bargaining representative for the following group of our employees:

All production and construction employees; excluding office clerical employees, supervisors and guards as defined by the Act.

WE WILL not in any manner interfere with, restrain, or coerce you in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL recognize and bargain collectively in good faith with the Alabama Carpenters Regional Council, Local 127 as the exclusive representative of employees in the unit described above and, if an understanding is reached, embody that understanding in a signed contract.

WE WILL offer Omar Garcia Vela, Cesar Moreno, Severino Morals, and Venancia Morales Serrano full and immediate reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions without prejudice to seniority or other rights or privileges.

WE WILL make whole Omar Garcia Vela, Cesar Moreno, Severino Morals, and Venancia Morales Serrano, for any loss of earnings or benefits they may have sustained as a result of our unlawful discharge of them, with interest.

WE WILL, remove from our files all references to the unlawful discharges of Omar Garcia Vela, Cesar Moreno, Severino Morals, and Venancia Morales Serrano and we will inform them in writing that we have done so and that the discharges will not be used against them in any way.

CONCRETE FORM WALLS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

233 Peachtree Street NE, Harris Tower, Suite 1000, Atlanta, GA 30303-1531
(404) 331-2896, Hours: 8 a.m. To 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (404) 331-2877